

Legislative Notice

No. 2

February 7, 2001

S. 235 – Pipeline Safety Improvement Act of 2001

Calendar No. 8

Read the second time on February 6, 2001, and placed on the Senate Calendar.

NOTEWORTHY

- Under a unanimous consent agreement, the Senate will proceed to the consideration of S. 235 on Thursday, February 8, at 11:15 a.m. Amendments must be relevant to the subject matter of pipeline safety, or to energy policy in California, or must be a study relative to energy.
- S. 235 is very similar to S. 2438 of the 106th Congress. That bill passed the Senate by voice vote on September 7, 2000. On October 10, the House took up the bill under suspension, which requires a two-thirds vote for passage. The measure failed to pass by a margin of 232-158.
- The bill reauthorizes and improves federal pipeline safety programs governing natural gas and hazardous liquid pipelines. It provides requirements to reduce safety risks and enhance protection of the environment.
- It is the Majority Leader's intention that the Senate move to final passage of the bill on Thursday.

HIGHLIGHTS

S. 235 authorizes appropriations for carrying out federal pipeline safety programs. Funds for the programs come from two primary sources: the Pipeline Safety Fund and the Oil Spill Liability Trust

Fund. Each year Congress specifies in the annual Department of Transportation Appropriations Act the amount of funding to be taken from each of those sources.

The Fiscal Year 2001 DOT Appropriations Act (P.L. 106-346), allocated a total of \$47 million available for pipeline safety programs, including \$36.6 million from the pipeline safety fund, \$7.5 million from the oil spill liability trust fund, and \$3 million from the reserve in the pipeline safety fund.

The three-year bill authorizes federal funding at \$26 million for fiscal year 2001, \$30 million for fiscal year 2002, and \$30 million for fiscal year 2003 to carry out federal pipeline safety activities. The pipeline state grant program would be funded at \$17 million for fiscal year 2001, \$20 million for fiscal year 2002, and \$20 million for fiscal 2003.

The bill does the following:

- Requires the implementation of pipeline safety recommendations recently issued by the Department of Transportation (DOT) Inspector General (IG) to the DOT Research and Special Programs Administration (RSPA). RSPA oversees the Office of Pipeline Safety (OPS).
- Requires DOT to issue regulations mandating pipeline operators to periodically determine the adequacy of their pipelines to safely operate and to adopt and implement integrity management programs to reduce those identified risks.
- Requires an operator of a gas transmission or hazardous liquid pipeline facility to carry out a continuing public education program that would include activities to advise municipalities, school districts, businesses, and residents of pipeline facility locations on a variety of pipeline safety matters.
- Increases level of maximum civil penalties for a violation from \$25,000 to \$500,000. The maximum civil penalty for a series of safety regulation violations would be increased from \$500,000 to \$1,000,000.
- Enhances state oversight role by permitting states that have the authority over intrastate lines to enter into agreements with the Transportation Secretary to participate in the oversight of interstate lines.
- Directs the Transportation Secretary to develop and implement a plan to collect and use pipeline data in a manner that would enable incident trend analysis and evaluations of operator performance.
- Provides for a collaborative research and development effort directed by DOT with the assistance of the Department of Energy and the National Academy of Sciences.

BACKGROUND

Near the end of the 106th Congress, the Senate passed S. 2438, legislation nearly identical to S. 235, by unanimous consent. A report to accompany S. 2438 was filed by the Senate Commerce Committee on August 25, 2000 after a number of amendments were adopted. During the 106th Congress, the House Commerce Committee reported H.R. 1378 (H. Rept. 106-153). The House Transportation and Infrastructure Committee held hearings on pipeline safety but failed to report a bill. S. 2438 was taken up under suspension of the rules in the House and needed the support of two-thirds of the members present and voting. The final vote was 232-158, 28 votes short of the required two-thirds. However, clearly the bill had the support of majority of both Houses.

The authorization for pipeline safety programs expired in September 2000. By delegation of the Secretary of the Department of Transportation (DOT) through the Research and Special Programs Administration (RSPA), the Office of Pipeline Safety (OPS) administers pipeline safety programs. Such safety programs were previously authorized through the Natural Gas Pipeline Safety Act of 1968, the Hazardous Liquid Pipeline Safety Act of 1979, and the Accountable Pipeline Safety and Partnership Act of 1996.

OPS regulates the day-to-day safety of interstate pipelines, including the operation, maintenance, and emergency response procedures pertaining to gas and hazardous liquid pipeline systems and also conducts a pipeline research and development program. It oversees the movement of natural gas to 60 million residential and commercial customers by more than 3,000 gas pipeline operators with more than 1.6 million miles of pipeline. The agency further oversees more than 200 hazardous liquid operators with more than 155,000 miles of pipelines that transport almost 60 percent of the crude oil and petroleum products used in the United States.

Over a 14-year period from 1986 to 1999, industry reported to the DOT an annual average of 23 fatalities, 113 injuries, and \$68 million in property damage as a result of 411 releases from pipelines during transportation. DOT statistics indicate that the major cause of pipeline releases is outside force damage (excavations) by third parties, such as construction companies and highway crews. Outside force damage causes, on average, 39 percent of all pipeline failures. Other causes include corrosion, material defects, and pipeline operator errors.

Significant releases from pipelines happen infrequently. Pipelines are one of the safest modes of transportation in the nation. Among all modes — highway, rail, aviation, marine, and pipeline —

fatalities from pipeline accidents represent less than 3/1000 of 1 percent of the total number of fatalities on an annual basis.

BILL PROVISIONS

Section 1. Short Title. The bill is designated as the Pipeline Safety Improvement Act of 2001.

Section 2. Implementation of Inspector General Recommendations. The section requires the implementation of pipeline safety recommendations issued in Report (RT-2000-069) by the Department of Transportation Inspector General (IG) to the Administrator of the Research and Special Programs Administration (RSPA), except as otherwise expressly provided in the bill. The IG recommends that RSPA: finalize outstanding Congressional mandates protecting unusually sensitive environmental areas and high-density population areas; expand the pipeline material defect detection research and development program; implement a training program for Office of Pipeline Safety (OPS) inspectors; improve accident data collection and interpretation; establish uniform accident reporting requirements; and establish timetables to implement open NTSB pipeline safety recommendations.

Section 3. NTSB Safety Recommendations. The section requires the Secretary of Transportation, the Administrator of RSPA, and the director of the Office of Pipeline Safety to respond to National Transportation Safety Board (NTSB) pipeline safety recommendations within 90 days of receipt, and to make recommendations and responses available to the public. Further, the Secretary is to submit annually to Congress a report responding to each pipeline safety recommendation made by the NTSB during the prior year.

Section 4. Qualifications of Pipeline Personnel. Pipeline operators must submit to the Secretary of Transportation (or, in the case of an intrastate pipeline facility operator, to the appropriate State regulatory agency) a plan designed to enhance the qualifications of pipeline personnel. The Secretary may establish minimum standards for pipeline personnel training and evaluation, and must submit a report to Congress three years after the date of enactment evaluating the effectiveness of the operator qualification plans and training efforts.

Section 5. Pipeline Integrity Inspection Program. The Secretary must issue regulations requiring hazardous liquid pipelines and natural gas transmission pipelines to evaluate the risks of the operator's facilities in environmentally sensitive and high-density population areas, and to implement a program for integrity management that reduces identified risks of an incident in those areas. The Secretary must

issue the regulations no later than one year after the Secretary issues standards identifying environmentally sensitive and high-density population areas.

The section requires that an operator's integrity management plan be based on risk analysis and include, at a minimum: periodic assessment of the integrity of the pipeline through methods including internal inspection, pressure testing, direct assessment, or other effective methods; clearly defined criteria for evaluating the results of the inspection or testing conducted and procedures to ensure identified problems are corrected in a timely manner; and measures, as appropriate, that prevent and mitigate unintended product releases (such as leak detection, restrictive flow devices, or other measures). The section requires operators to take into account the pipeline's leak history and the potential for the development of pipeline defects when determining how frequently to conduct integrity inspections.

The section authorizes a State having a pipeline safety agreement with the Secretary to review and assess the operator's risk analyses and integrity management plan, and provide the Secretary with a written assessment of the operator's plan. The State is authorized to make recommendations to address safety concerns not adequately addressed in the operator's plans and to submit documentation explaining the State-proposed plan revisions. The Secretary is required to carefully consider the State's proposals and work in consultation with the State and operator to address safety concerns.

The Secretary may review the operator's risk analysis and integrity management program, and must provide for continued monitoring of such plans. The Secretary also must evaluate the effects on safety and the environment of extending all of the requirements to areas not designated as environmentally sensitive or high-density population areas.

Finally this section provides opportunity for local input on integrity management. Within 18 months after the date of enactment of the Pipeline Safety Improvement Act of 2001, the Secretary shall establish a process for raising and addressing local safety concerns about pipeline integrity and the operator's pipeline integrity plan.

Section 6. Enforcement. This section provides the Secretary with greater authority to take action to prevent or restrict the operation of a system identified as a hazard or a would-be hazard. The Secretary (or, in the case of an intrastate pipeline facility operator) may extend the action after notice and an opportunity for a hearing if it is determined that the resumption of operation would create an imminent hazard.

Section 7. Public Education, Emergency Preparedness, and Community Right to Know. This section requires each owner or operator of a gas or hazardous liquid pipeline facility to carry out a continuing public education program on a variety of specified scenarios, including the use of a one-call notification system prior to excavation, what steps should be taken for public safety in the event of a pipeline release, and how to report such a release. Pipeline owners and operators are required to modify their public education programs as necessary and advise affected municipalities, school districts,

businesses, and residents of pipeline facility locations. The Secretary may issue standards prescribing the elements of an effective public education program.

The section further requires an operator of a gas transmission or hazardous liquid pipeline facility to maintain liaison with the State emergency response commissions and local emergency planning committees in the areas of pipeline right-of-way in each State in which it operates. The section requires the operator, upon request, to provide a copy of its integrity management program and include certain information including: the business name, address, telephone number of the operator, including a 24-hour emergency contact number, and a detailed description of the facility. The Secretary will prescribe requirements for public access, as appropriate, to this information, as well as to integrity management program information.

The owner or operator of gas transmission or hazardous liquid pipeline facilities must provide municipalities in which the facility is located, a map identifying the location of such facilities. The Secretary may provide technical assistance to the pipeline industry on developing public safety and public education program content and delivery. The Secretary may make available to the public safety condition reports and pipeline incident reports filed by operators.

Section 8. Penalties. The civil penalty for violating safety regulations would be increased from \$25,000 to \$500,000. The maximum civil penalty for a series of safety regulation violations would be increased from \$500,000 to \$1,000,000. In determining the amount of any civil penalty, the Secretary is required to consider the nature and impact of the violation.

Section 9. State Oversight Role. This section enhances State pipeline safety oversight responsibilities. It permits the Secretary to make an agreement with a State authorizing the State authority to participate in the safety oversight of interstate pipeline transportation. Each agreement must include a plan for the State authority to participate in special safety investigations involving incidents or new construction and allow participation in other activities overseeing interstate pipeline transportation. Prior to issuing a certificate for participation, the Secretary must assure that participation in the interstate program would not negatively impact existing State responsibilities over intrastate pipelines. To qualify for participation in the certification program, the State must meet the minimum standards for a one-call notification program outlined in Chapter 61, U.S.Code 49.

The section provides authority for the Secretary to end agreements under specified situations, including noncompliance with the agreement. The Secretary must first provide notice and an opportunity for a hearing to the State.

Existing pipeline safety oversight agreements with States are allowed to remain in effect until the Secretary determines that the State meets the new requirements established in the section. However, the Secretary, after affording the state notice, hearing, and an opportunity to correct any alleged deficiencies, has the ability to terminate an agreement in effect before enactment of the Pipeline Safety Improvement Act of 2001.

Section 10. Improved Data and Data Availability. The section requires the Secretary to develop a comprehensive plan to collect and use pipeline data in order to thoroughly assess the many factors in accidents. The plan shall include components that would allow the performance of sound incident trend analysis and evaluations of pipeline operator performance.

The section requires the Secretary to establish a national depository of data on spill histories and corrective actions taken by pipeline operators that would be used to evaluate the risk of, and to prevent, pipeline failures and releases.

The section requires owners and operators of hazardous liquid pipeline facilities to report to the Secretary any release exceeding five gallons of hazardous liquid or carbon dioxide transported. The report must include the location of the release, facilities and personal injuries, type of product, amount of product, cause(s), and the response undertaken to clean up the release. The failure to report releases would be enforceable through existing civil and criminal sanctions. Civil and criminal penalty enforcement authority is provided for the failure to provide needed records upon request in an incident investigation.

Section 11. Research and Development. The Secretary must support research and development activities that expand the detection capabilities of internal inspection devices, identifies alternatives for pipelines that cannot accommodate devices on the market, and develops innovative techniques measuring the structural integrity of pipelines.

In addition, the Secretary of Transportation, in coordination with the Secretary of Energy, shall implement an accelerated program of research and development to ensure the integrity of natural gas and hazardous liquid pipelines. Within 240 days of enactment, the Secretary of DOT, with the Secretary of Energy and the Pipeline Technical Advisory Committee, shall submit to Congress a five-year program plan to guide activities under this subsection.

Section 12. Pipeline Integrity Technical Advisory Committee. The Secretary of Transportation shall work with the National Academy of Sciences to establish and manage the Pipeline Integrity Technical Advisory Committee for the purpose of advising the Secretaries of Transportation and Energy on the development and implementation of the five-year research, development, and demonstration plan.

Section 13. Authorization of Appropriations. The section authorizes appropriations for FYs 2002-2004 for pipeline-safety activities at the Research and Special Programs Administration and the pipeline safety state grants. For pipeline safety activities, the bill authorizes \$26 million in FY02; and \$30 million in FY03 and FY04. For pipeline safety grants, the bill authorizes \$17 million for FY02 and \$20 million for FY03 and FY04. Up to \$8 million a year may be transferred out of the Oil Spill Liability Trust Fund to support pipeline-safety activities. Further, \$3 million a year is authorized from the Oil Spill Liability Trust Fund and \$3 million from user fees for FYs 2002 through 2006 for carrying

out research and development under Section 11(b) and establishing the Pipeline Integrity Technical Advisory Committee under section 12.

Section 14. Operator Assistance in Investigations. Operators must make available to the Department of Transportation or the NTSB all records and information pertaining to an accident under investigation by DOT or NTSB.

The Secretary, in situations when a corrective action order has been issued following an accident, must determine if the actions of an employee carrying out an activity regulated under this chapter may have contributed substantially to the cause of the accident. If the Secretary determines that an employee has contributed substantially to the cause of the accident, the Secretary shall direct the operator to relieve the employee from performing those activities, reassign the employee, or place the employee on leave. Action taken by the operator under this section shall be in accordance with the terms and conditions of any applicable collective bargaining agreement to the extent it is not inconsistent with the requirements under this section.

Section 15. Protection of Employees Providing Pipeline Safety Information. Pipeline operators, contractors, and subcontractors of a pipeline are prohibited from firing, or taking other adverse action against, an employee from doing any of the following: providing information to the employer or Federal government relating to pipeline safety; filing or being about to file a proceeding relating to pipeline safety; testifying or being about to testify in such a proceeding; or assisting or participating in such a proceeding.

The section establishes procedures governing the filing of complaints by aggrieved whistle blowers. The procedures are identical to those recently enacted in the Wendell H. Ford Aviation Investment and Reform Act (P. L. 106-181).

The section describes the final order procedures and lists the remedies that could be ordered as follows: take action to abate the violation; reinstate the employee with back pay; and provide monetary damages to the employee. The section provides that if a final order is issued, the Labor Secretary, at the request of the employee, shall assess the employee's attorney's fees against the person against whom the order is issued.

The section also provides that if the Secretary of Labor finds that a complaint is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorney's fee not exceeding \$1,000.

The section establishes judicial review procedures.

The whistle blower protections do not apply to any employee of a pipeline, contractor or subcontractor who, acting without direction from the pipeline contractor or subcontractor, deliberately causes a violation of any requirement relating to pipeline safety.

Section 16. State Pipeline Safety Advisory Committees. This section requires that within 90 days after receiving recommendations for improvements from an advisory committee appointed by the governor of any State, the Secretary of Transportation shall respond in writing to the committee setting forth what action, if any, the Secretary will take on those recommendations.

Section 17. Fines and Penalties. The DOT Inspector General must conduct an analysis of the Department's assessment of fines and penalties on gas transmission and hazardous liquid pipelines, including the cost of corrective actions required by the Department in lieu of fines, and submit a report on the analysis within six months after the date of enactment.

Section 18. Study of Rights-of-Way. The Secretary may conduct a study on how best to preserve environmental resources in conjunction with maintaining pipeline rights-of-way. The study must recognize pipeline operators' regulatory obligations to maintain rights-of-way and to protect public safety.

ADMINISTRATION POSITION

There was no Statement of Administration Policy at press time, but one was anticipated to be available on February 8.

COST

There was no current cost estimate available at press time. A CBO report will be published in the *Congressional Record* as soon as it is available.

OTHER VIEWS

Senators Breaux, Lott, Brownback, Abraham, Hutchison, Cleland, and Dorgan filed additional views on several sections of last year's bill. Those views can be found on pages 22-26 of S. Rept. 106-387. Most of the concerns raised have been satisfied.

POSSIBLE AMENDMENTS

Note that the unanimous consent agreement limits amendments to those relevant to the subject matter of pipeline safety, or to energy policy in California, or must be a study relative to energy.

At press time, we were aware of the following possible amendments:

Managers' amendment. Amending sections 5, 13, and 14 of S. 235.

Feinstein.

Regarding the authority of the Secretary of Energy to impose caps on wholesale energy prices.

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